IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 318 of 1991

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DISNESHCHANDRA V THAKORE & 2 - Petitioner(s)

Versus

USHABEN D/OF BP BHARUCHA & 2 - Respondent(s)

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Appearance :

MR SH SANJANWALA for Petitioner No(s).: 1.

MR CJ VIN for Respondent No(s).: 1.

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CORAM :HON'BLE MISS JUSTICE R.M.DOSHIT

Date : 04/07/2005

ORAL JUDGMENT

Feeling aggrieved by the judgment and order dated 28th September, 1990 passed by the learned Assistant Judge, Surat in Regular Civil Appeal No.84/1985, the appellants (plaintiffs in Small Cause Suit No.729/1979)

have preferred the present Revision Application under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as, "**the Rent Act**").

The petitioners-plaintiffs are the owners of the suit premises, a residential house bearing City Survey No.73 situated in Ward No.10 in Surat. The suit premises was leased to one Babubhai Prabhudas for a monthly rent of Rs.14=00. After the death of the said Babubhai, his widow one Taraben Babubhai continued to reside in the suit premises as a tenant. The said Taraben died on 26th March, 1979 leaving the defendant no.1, a married daughter residing at Vadodara. The plaintiffs instituted Small Cause Suit No.729/1979 in the Court of Small Causes, Surat for recovery of possession of the suit premises. According to the plaintiffs the deceased tenant Taraben was living alone in the suit premises; that her heir, the defendant no.1 was not residing with her at the time of her death. The defendant no.2 was neither the member of her family nor was he residing with the said Taraben at the time of her death. The defendant no.2 had trespassed in the suit premises after the death of the

said Taraben. The suit was contested by the defendant no.1 vide written statement Exh.13 and by the defendant no.2 vide written statement Exh.23. According to the defendant no.1 she had been residing with the deceased Taraben for six months prior to her death. She, however, did not give oral evidence in the trial. The defendant no.2 maintained that he was the nephew of the deceased Taraben; that since the age of 8 years he was residing with the said Taraben and he was brought up by the said Taraben. At the time of her death the defendant no.2 was residing with her. He being the member of her family residing with her at the time of her death, he was the tenant as defined under Section 5(11)(c)(i) of the Rent Act.

The learned trial Judge, by judgment and order dated 8th April, 1985, held that the defendant no.2 was the tenant as envisaged by Section 5(11)(c)(i) of the Rent Act. The claim of the defendant no.1 was rejected. Consequently, the plaintiffs' suit for possession was dismissed. Feeling aggrieved, the plaintiffs preferred Regular Civil Appeal No.84/1985 in the Court of District Judge, Surat. The learned Assistant Judge heard the Appeal and dismissed it by impugned judgment and order

dated 28th September, 1990. Therefore, the present Revision Application.

Mr.Sanjanwala has submitted that admittedly the defendant no.1 had married during the life time of the deceased tenant Babubhai Prabhudas and was residing in her matrimonial home at Vadodara. She, though was an heir to the deceased Taraben, had not been residing with her at the time of her death and, therefore, was not a tenant within the meaning of Section 5(11)(c)(i) of the Rent Act. As to the defendant no.2, he has submitted that the defendant no.2 claimed to be the nephew of the deceased Taraben and to have been brought up by the said Taraben. He has submitted that there is nothing on the record to suggest that the defendant no.2 had been residing with the deceased Taraben at the time of her death nor can the defendant no.2 be said to be the member of the family of the deceased Taraben. He has submitted that both the Courts below have committed a grave error in holding that the defendant no.2 was the dependent member of the family of the deceased Taraben and that he was residing with the deceased Taraben. He has relied upon the judgment of this Court in the matter of **Madhuben Natwarlal & Ors. V/s.**

Prajapati Parshottam Tulsidas [1990(2) GLR 1177]. In the said matter this Court has held that, **"...the word 'family' has to be given not a restricted but a wider meaning so as to include not only the head of the family but all members or descendants from the common ancestors who are actually living with the same head.....it would not mean that distant nephews or cousins should be considered as family members. By amending Sec.5(11)(c) the Legislature stepped in and provided a special mode of succession to the tenancy rights or lease hold rights to the extent of irremovability from possession to those who were in need of it but has limited it to the members of the tenant's family. Normally 'family' includes parents, spouse, brothers, sisters, sons or daughters or in some cases widow of a pre-deceased son or the issues of the pre-deceased sons but by no stretch of imagination it can be held that the distant nephews would be the family members howsoever broad meaning is given to the word 'family'."**

In the present case, it has come on record that the defendant no.2 was the son of one Jamnaben from her first

husband Ranchhoddas. The said Jamnaben had remarried to one Ishwarbhai, the brother of the deceased Taraben when the defendant no.2 was about 8 years old. That is how the defendant no.2 claims to be the nephew of the deceased Taraben and to have been brought up by her. In my view, by no stretch of imagination, howsoever broad meaning be given to the word 'family', a nephew would be a member of the family of the tenant for the purpose of Section 5(11)(c)(i) of the Rent Act. Besides, it has come on record that the mother of the defendant no.2 was residing at Surat. The family of the biological father of the defendant no.2 was also residing at Surat and that the defendant no.2 was residing with them. Thus, School Leaving Certificates issued by the schools at Surat do not establish that the defendant no.2 was residing with the deceased Taraben at the time of her death. The defendant no.2, therefore, cannot be said to be a tenant within the meaning of Section 5(11)(c)(i) of the Rent Act. On the death of the deceased Taraben the tenancy shall revert to the landlord.

In view of the above discussion, the Revision Application is allowed with cost. The judgment and order

dated 28th September, 1990 passed by the learned Assistant Judge, Surat in Regular Civil Appeal No.84/1985 is quashed and set-aside. The Small Cause Suit No.729/1979 instituted in the Court of Small Causes, Surat is allowed. A decree for possession be passed in favour of the plaintiffs. The defendants do hand-over the vacant and peaceful possession of the suit premises to the plaintiffs. Rule is made absolute.

(Ms. R.M.Doshit, J.)

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